



CITY OF GARDINER BOARD OF APPEALS

Minutes
Tuesday September 13, 2021
6:00 PM
City Council Room Chambers

Call Meeting to Order: Chair Young called the meeting to order at 6pm

Roll Call: Board Members- Chair Lester Young, Kevin Sullivan, Guy Ferriss, Ted Potter. City Staff-Tracey Desjardins- Economic Development Director, Kris McNeill- Code Enforcement Officer, Angelia Christopher-Planning and Development Assistant. City Solicitor-Jon Pottle, Applicants Attorney- Kenneth Fredette. Applicants Eric McMaster, Robert Wheelock, Applicants business associates-Thomas Catchings, Eric and Katrina Duffin, and Robin Spencer- Board Member Glen Glazier- did not attend.

No minutes to review-

Opening Statement: Attorney Pottle speaks to the group to ensure these appeals have a clear record. He asks Board members if there is any bias or conflict of interest regarding the nature of these applications. Guy Ferriss tells the group that he was a federal employee for 28 years, and worked in homeland security, but he is not biased towards this application. Kevin Sullivan tells the group that he can hear these applications in an unbiased manner. Chair Lester Young says that he is currently a federal employee, but this is a procedural process, so he can vote in an unbiased manner. Ted Potter tells the group that he can hear this in an unbiased manner.

Attorney Pottle states if there are no issues or concerns, that the first appellant should present their case. He goes on to say that these appeals are based on the decisions delivered from the Planning Board, and no new evidence should be introduced.

Administrative Appeal-Public Hearing- Eric McMaster has submitted an Administrative Appeal application. He is appealing the Planning Boards July 27, 2021 denial of his request to add a 14x30 building to the property that he leases at 15 Lions Way. This building would be installed with the intent to be used as a commercial kitchen to manufacture adult-use marijuana products. The property is in the Multi-Use Village- MUV) Zoning District, 15 Lions Way, City Tax Map 029 Lot 001A.

Attorney Fredette is presenting for Mr. McMaster. Attorney Fredette and Attorney Pottle have discussed this case, to clarify the record. Mr. Fredette states that he has seen the property, which is a corner lot, and is enclosed with a barbed wire topped chain link fence. This is currently a cultivation facility where product is grown, harvested, and taken away. There is no customer traffic at this site. The applicant seeks to put up a 14x30 prefab building that will serve as a commercial kitchen. This will be used for manufacturing edibles for their businesses on another site.

Planning board denied Mr. McMasters application due to the proximity to the school. The focus of this meeting is to review the denial.

Attorney Fredette states that the fence in question is over 5' high, covered with razor wire and has been in place for many years. Considering the fact that this property used to be a military establishment, the fence was likely put in place to keep the area safe and secure. The only way to get into this property is through an opening in the gate, at the furthest end of the property. The distance, from the school, to the gate opening, is over 1000'. He states that it would take a ninja to get from the school, through the wooded property, over the barbed wire chain-link fence, to get to the door of this building. This should be considered under what the reasonable person could do, not a ninja.

LUO Section 10.29.1 states that Planning Board may approve to allow a marijuana establishment to operate with a minimum setback of 500 feet from a school if the properties are physically separated from the protected lot by a natural or other physical feature that makes pedestrian access between the two lots impractical.

When this application went before the Planning Board, the Board stopped their review when the proximity issue came up. The application was only partially reviewed. The Appeals Board has the option to send this application back to the Planning Board, so they can finish their work with reviewing the application.

The applicant's Planning Board application was received before a change to the LUO pertaining to marijuana establishments. The applicant is growing medical cannabis in their building which is in the Mixed Use Village-MUV zone. In June 2021 this was an allowed use. Mr. McMaster's application was received June 2, 2021. Effective July 16, 2021, 10.29.2 the change took place and marijuana establishments were no longer allowed in MUV. Therefore changing this use, in this zone, as not permitted. The law that would apply is the version of the LUO that was in place when he applied for Planning Board review. The applicant is protected on pending proceedings and had his application to the Planning and development dept. well ahead of the change that happened on 7/16/2021.

Chair Lester Young opened the meeting for public comment. The only person here to speak is Robin Spencer. Mr. Spencer, is the property owner and explains that Mr. McMaster is a very good tenant. There had been a discussion during the Planning Board meeting that questioned what would happen if Mr. Spencer took the fence down. Mr. Spencer states that it will not be taken down. Mr. Spencer tells the board that after the lease runs out on the building, Mr. McMaster has expressed his intent to purchase the building, leaving him responsible to maintain the fence. There is no one else present to speak for or against this application. There was a letter from an abutter that came to the City of Gardiner to be presented at this meeting. Mr. Fredette requests that the letter is not part of the record under review and asks that it be rejected.

Chair Young closed the public meeting.

Kevin Sullivan, a Board member, tells the group that he watched the recording of the Planning Board meeting just to familiarize himself with the application. There was a memo, written by Mark Eyerman, sent to Planning Board members just before the meeting that was not sent to the applicants. Mr. Eyerman was also not at the Planning Board meeting to present this information, so the applicant did not get to review the information. Mr. Sullivan states that he questioned if the applicants had everything they needed to present their case for Planning Board approval. He felt that the applicant should have presented more than he did. The Planning Board really focused on the fence and the proximity issue. Mr. Sullivan wanted to know if they were making their decision based on the 1000' proximity distance in a direct line or the pedestrian pathway. He goes on to say that the fence is definitely not a natural barrier as required in the ordinance, but it can apply as a physical feature, under 'or other'.

The Planning Board stopped their review of the application after the fence discussion. Mr. Sullivan states that after they discussed the fence issue, the Board essentially closed/denied the application. Mr. Sullivan states that he feels the Planning Board's decision was very vague, and not specific and that they should have finished reviewing the application. He feels that Mr. McMaster's application should be remanded back to the Planning Board.

Chair Young asks if the Board has any more questions and if not, are they ready to vote? They can approve, deny or remand the application back to the Planning Board.

The Planning Board denied the application based on one standard. The Appeals Board feels that the record is not sufficient to offer a denial for this appeal. They can request it be sent back to the Planning Board so they can review the application for a more complete record.

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.Mr. Sullivan states that 10.29.1.2 reads ‘protected by a natural or other feature’. The Planning Board expressed that the fence is not a physical feature. Board of Appeals members feel that the Planning Board erred there and the fence is a physical feature. Guy Ferris concurs, as well as Chair Les Young. Mr. McMaster tells the group that the fence encloses the property, and when they step onto the property, the security system comes on. The fence has a code, which is given to a limited number of people.

Kevin Sullivan makes a motion that the fence, which is described in the record, satisfies the LUO defined in 10.29.1.2 as a physical barrier. Guy Ferris seconds. No further discussion. Unanimous vote for the fence satisfying the requirement of a physical feature to set the distance to 500’.

The Board has established that 10.29.1.2 is satisfied, with the approval of the fence as a physical barrier. If the criteria of the standard is met, Mr. McMaster should be allowed to use the 500’ + reduced setback.

Mr. Potter, Board member, feels that this application should be remanded back to the Planning Board, so they can further review it to clarify the record.

Kevin Sullivan makes a motion that the applicant should receive the benefit of the 500’ setback as allowed in 10.29.1. Guy Ferris seconds. Mr. Ferris asks if the application is going to be sent back to PB, will it be reviewed under the newer rules. Attorney Pottle tells the board that this application will have to be reviewed under the previous rules, before the changes were made.

The Board feels that this needs to be remanded back to Planning Board in order to continue with the review of this application.

The appeal is granted, and the application will be remanded back to the Planning Board for further review.

Kevin Sullivan moves that the planning board record remains open to new evidence until the board finalizes the review of the application. Guy Ferris seconds. All in favor.

Kevin Sullivan makes a motion that the City solicitor draft the decision to be considered, Guy second all in favor. Attorney Jon Pottle will draft a written notice of decision. Attorney Pottle will have this done within the next 7 days. The Board of Appeals will review the decision, and approve or deny it.

Administrative Appeal-Public Hearing- Robert Wheelock, has submitted an Administrative Appeal application. He is appealing the Planning Boards July 27, 2021 denial of his request to use part of the space at 333 Brunswick Ave, for an Adult Use Marijuana Cultivation. If approved the applicant would have two, separate cultivation facilities in this building. One would be medical marijuana, and the other side of the building would be Adult use-recreational marijuana. The property is in the Multi-Use Village- MUV) Zoning District, City Tax Map 029 Lot 001.

Chair Lester Young opens this application. This is for Green ReLeaf, which went before the Planning Board on 7/27/2021. The Planning Board denied this application as well. Mr Wheelock owns the building at the front of this lot. The back and sides of the property are enclosed by a chain link- barbed wire topped fence. No customers visit this establishment, and there are no deliveries from outside vendors.

The Planning Board cited the same provision 10.29.1., stating that the application did not meet the proximity distance. The entrance to this building is in the back. The front portion of this building holds a medical marijuana cultivation. Mr. Wheelock states that the whole structure would need to be divided if the application had been approved, keeping the two cultivations completely separate. Mr. Wheelock, as owner of his building, will maintain his portion of the fence. If it were needed, a fence to separate the two properties could be added. The minutes from the 7/27/21 PB meeting reflect the same facts and circumstances in the Board’s decision on this application.

Chair Young opened the public hearing. There is no one here to comment for or against this application.

Chair Young closed the public hearing.

Board members are in consensus on this application. They feel that this applicant should receive the benefit of the 500' setback as allowed in 10.29.1.

Kevin Sullivan moves that the fence as described in the record satisfies the requirements of 10.29.1.2, that the applicant receive the benefit of the minimum 500' setback as allowed in 10.29.1, that the Planning Board record remain open to new evidence until the Planning Board finalizes its review of the application, and that the appeal be granted and hereby remand the application back to Planning Board for further development consistent with the findings of the board and to continue the application review. Guy Ferriss seconds.

Chair Young would like to amend the motion to include the fence and wall as described in the record satisfies the requirements of 10.29.1.2 that the applicant receive the benefit of the minimum 500' setback as allowed in 10.29.1, that the Planning Board record remain open to new evidence until the Planning Board finalizes its review of the application, and that the appeal be granted and hereby remand the application back to Planning Board for further development consistent with the findings of the board and to continue the application review. Kevin Sullivan second, all in favor.

Appeal is granted, and the application will be remanded back to the Planning Board for further review.

Kevin Sullivan moves that the city solicitor drafts the final decision and rulings in this matter. Lester Young second. All in favor.

The Board and applicants will reconvene to review the decision draft on 9/16 at 9 am, at City Hall.

Kevin Sullivan moves that the Board reconvene on 9/16 at 9am at City Hall to finalize these appeals. Guy Ferriss second. All in favor.

Kevin Sullivan moves to adjourn at 8:44pm. Guy Ferris seconds. All in favor.